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NOTICE FOR PUBLICATION.

Serial No. 04874.
Department of the Interior, United States Land Office, Carson City, Nevada, April 7, 1910.
Notice is hereby given that Fred A. Burnham has filed in this office his application to enter, under the provisions of section 2306 of the revised statutes of the United States, the southeast quarter (1/4) of the southeast quarter (1/4) of section seven (7) and the northeast quarter (1/4) of the northeast quarter (1/4) of section eighteen (18), township four (4) north, range forty-four (44) east, Mount Diablo base and meridian. Any and all persons claiming adversely the lands described, or desiring to object because of the mineral character of the land, or for any other reason, to the disposal of the applicant, should file their affidavits of protest in this office, on or before the 17th day of May, 1910.

LOUIS J. COHN,
Register.
Date of first publication April 16, 1910.
Date of last publication May 21, 1910.

NOTICE FOR PUBLICATION.

Serial No. 04873.
Department of the Interior, United States Land Office, Carson City, Nevada, March 28, 1910.
Notice is hereby given that the Aztec Land and Cattle company, limited, a corporation, organized and existing under and by virtue of the laws of the state of New York, has filed in this office its application to select, under the provisions of the act of congress approved June 4th, 1897 (30 Stat. 36), the northeast quarter of the northeast quarter of section nine (9); the east half of the southeast quarter and the southeast quarter of section eighteen (18); all in township four (4) north, range forty-four (44) east, Mount Diablo base and meridian. Any and all persons claiming adversely the lands described, or desiring to object because of the mineral character of the land, or for any other reason, to the disposal of the applicant, should file their affidavits of protest in this office, on or before the 17th day of May, 1910.

LOUIS J. COHN,
Register.
Date of first publication April 16, 1910.
Date of last publication May 21, 1910.

NOTICE FOR PUBLICATION.

Serial No. 04872.
Department of the Interior, United States Land Office, Carson City, Nevada, March 28, 1910.
Notice is hereby given that the Aztec Land and Cattle company, limited, a corporation, organized and existing under and by virtue of the laws of the state of New York, has filed in this office its application to select, under the provisions of the act of congress approved June 4th, 1897 (30 Stat. 36), the northwest one-quarter (1/4) of section eight (8), township four (4) north, range forty-four (44) east, Mount Diablo base and meridian. Any and all persons claiming adversely the lands described, or desiring to object because of the mineral character of the land, or for any other reason, to the disposal of the applicant, should file their affidavits of protest in this office, on or before the 17th day of May, 1910.

LOUIS J. COHN,
Register.
Date of first publication April 16, 1910.
Date of last publication May 21, 1910.

JUDGE AVERILL SUSTAINS DECISION OF LOWER COURT

Four Strike Breakers are Found Guilty for Third Time of Carrying Concealed Weapons.

Judge Mark R. Averill of the fifth judicial district court yesterday morning rendered his decision in the cases of the four strike breakers, who were found guilty in the justice court on charges of carrying concealed weapons. Judge Averill's decision sustained the lower court verdict, and the four men, Hans Legune, B. Allen, George Van Hoesten and R. A. Davis, will be sentenced Wednesday morning. In the meantime they are out on bail, the sum having been fixed at \$200 in each case. The decision is pronounced by the legal fraternity of Tonopah, to be one of the best ever rendered in the local court, the clearness making it self explanatory to the ordinary layman.

Just what the attorneys for the defendants will do next in an attempt to secure the freedom they have been battling for ever since the arrest of the men, is problematical. It is understood, however, that counsel is now making preparations to carry the matter to the supreme court which may be done by asking for a writ of habeas corpus, certiorari proceedings or asking for a writ of prohibition.

The opinion and findings of the court as handed down, are as follows:
Upon trial of these causes the following facts were proven beyond a reasonable doubt:
A—The Tonopah and Goldfield railroad as a common carrier.

B—The defendants were employed as watchmen by the said railroad company.
C—The defendants were not employed in train service; that is, no one of them was employed on April 4, 1910, as a conductor, a brakeman, an engineer, or a fireman.
D—The defendants, on April 4, 1910, in the town of Tonopah, Nye county, Nevada were carrying concealed weapons.

E—The said concealed weapons were carried under instructions from the special agent of the said company, who in turn was acting under instructions from the superintendent.

F—The attorneys of the company had advised the superintendent that concealed weapons could be carried by all employees of the railroad company, the language used being in part as follows:
"In our opinion it permits all

persons on our payroll to carry concealed weapons."

These facts having been established, all that remains is interpretation of the act of March 17, 1903, entitled "An act to prohibit the carrying of concealed weapons, and to provide for the punishment thereof," which requires a close analysis of the act.

This court has already decided that, although the intention of the legislature may have been to prohibit the carrying of "dangerous" weapons, the title restricts the application of the act to "concealed" weapons; and for this reason no reference will be made to those parts of the act that are not within the scope of the title.

The act consists of the following parts:

- 1—Unlawful to carry concealed weapons.
- 2—In any town.
- 3—Without obtaining permission of the county commissioners.
- 4—Commissioners may grant permits.
- 5—Penalty for violation.
- 6—Exemption of peace officers.
- 7—Exemption of common carriers.
- 8—Exemption of travelers through the state.

Of these, eight parts only three need any discussion here, Nos. 1, 2, and 7. No. 2 seems generally to have been overlooked in the discussion of the cases, though it has an important bearing upon the usual rules of interpretation as they may be applied to part 7.

It is easy to see why peace officers are exempted, and the courts would probably hold them so in any event. Travelers through the state may feel the need of carrying concealed weapons, as many travelers do; and it would be a hardship upon them to be compelled to lay over for permits in every county.

A great deal has been said about the right of courts to strike out words from a statute or insert words therein in order to give it meaning and effect; and this right is strenuously denied to them at times and just as strenuously contended for at others. There can be no doubt that it exists, but only to a limited extent and for good reasons. It is often asserted that most of the law of this country is "court

made" law, and no one will dispute that courts do supplement the work of the legislature, that they should do so, and that in many instances they must do so.

This court is now called upon for the second time to supplement the work of the legislature of 1903, as to the act under discussion. It has already stricken from the act all parts thereof not relating directly to "concealed" weapons, because of the limitations of the title. It is now called upon to add enough words to part 7 to clear up its application, for without additional words it is almost devoid of meaning.

A railroad is a common carrier, and as such this act declared that it has a right to carry concealed weapons, which is clearly an absurdity, as the corporation itself has no means of so doing. The owners of a stage line are common carriers. May they carry concealed weapons merely because they are common carriers? Surely not unless "acting" or "engaged" in the business, and here arises another absurdity, for proprietors are very seldom "acting" or "engaged" in the business itself to the extent of having any need of carrying concealed weapons. This duty is delegated to drivers, messengers, guards, etc.

A peace officer not on duty, a traveler through the state on a layover to examine a mine, a stage proprietor engaged in a game of solo or taking a meal, has no right to carry a concealed weapon until he again brings himself within the "reason and spirit of the law," which happens when the peace officer goes on duty once more, when the traveler resumes his journey, when the stage owner takes up the work of driver, messenger, or guard.

This court is asked by the railroad company to add words to part 7 and make it read as follows:

"This act shall not apply to persons and corporations acting or engaged in the business of common carriers, or to any of their employees."

This court will readily agree to the addition of the words "or corporations," because they are comprehended within the word "persons," but must decline to add the words "or any of its employees." Why? Because this court is bound by rules of interpretation, of which there are many; in this case, however, only two need be called upon.

"The effects and consequences of a rule of law aid in ascertaining its true meaning. When under one interpretation, these effects and consequences are absurd, unjust, or contrary to the public good, and, under another interpretation, such effects and consequences are reasonable and just, it is evident that the latter interpretation is alone correct."

"The reason and spirit of a rule of law, or the cause which moved the legislature to prescribe it, is another indication of its actual sig-

nificance; the end contemplated by the act and toward which it was directed must always be considered." 1 Blackstone 59-61. 1 Kent. Lect. XX. 462-465.

Would it not be "absurd" to extend the exemption to all the employees of a railroad corporation? Would it not be contrary to the public good? What possible "reasonable and just effects and consequences" can result from permitting all the employees of a railroad to carry concealed weapons?

The interpretation contended for by the railroad corporation, employer of defendants, is absurd and cannot be acceded to. It is absurd because there is no need of it, and because it extends a privilege to many persons in preference to, the mass of the people without a competent reason therefor, which is contrary to public policy.

Why should a freight handler employed by a railroad company be allowed a concealed weapon any more than any one in a mercantile warehouse? Why should a railway clerk need a concealed weapon any more than a clerk in a store on an office?

The interpretation contended for by the railroad company is contrary to the public good, for the reason that it confers a privilege upon many persons that may be abused, may become oppressive, and which savors of uncalled for special legislation.

The defendants were employed as watchmen and armed with concealed weapons. A watchman is one who watches against injury to property, danger to fellow workmen, etc. These men were especially delegated to watch air hose connections and other delicate appliances that might have been readily and quickly injured in attempts of persons unfriendly to the company to put a train out of working order. Suppose any one of them had seen any such attempt, as one of them claims he did. What was then his duty?—to draw his weapon and kill the offender? If so, the public good was seriously menaced, for no man has the rights of judge, jury and executioner, all in one, embodied in him. The watchman's duty was to report the injury so that it might be repaired

and the offender arrested and punished, or to prevent it by calling upon the peace officers for assistance, or by physical exertions not requiring maiming or killing. What did these men have guns for? Was it not for the purpose of preventing physical abuse to themselves in case of violence or riot—in other words, for self-defense? And was it necessary to conceal weapons carried for that purpose?

Weapons openly displayed often have a preventative effect, while those concealed often have an incentive effect, arising from the extra confidence of the possessor, who for that reason does not seek to avoid trouble. They lead him to do a little more than to strictly to attend to his duty. Right here we have the reason for legislation against concealed weapons. We desire to do away with the "incentive" effect of them. Railroad watchmen promiscuously selected are as serious a menace to public good

(Continued on Page Four.)

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